No. 80-2043

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

BOARD OF EDUCATION, ISLAND TREES UNION FREE SCHOOL DISTRICT NO. 26, RICHARD AHRENS, FRANK MARTIN, CHRISTINA FASULO, PATRICK HUGHES, RICHARD MELCHERS, RICHARD MICHAELS, AND LOUIS NESSIM,

Petitioners,

v.

STEVEN A. PICO, by his next friend, FRANCES PICO, JACQUELINE GOLD, by her next friend, RONA GOLD, RUSSELL RIEGER, by his next friend, SAMUEL RIEGER, GLENN YARRIS, by his next friend, RICHARD YARRIS and PAUL SOCHINSKI, by his next friend, HENRY SOCHINSKI,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF *AMICUS CURIAE* THE LONG ISLAND LIBRARY ASSOCIATION COALITION IN SUPPORT OF RESPONDENTS

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Interest of *Amicus Curiae*

This is a case about *libraries*—not about classrooms.

This is a case about *library books*—not about textbooks.

This is a case about *librarians*—and their role in the selection and maintenance of library materials.

* * *

The complaint in this case alleges that the actions of the school board members imposed arbitrary and unreasonable restrictions upon the ability of librarians to function properly (J.A. -5).* Regrettably, that allegation, and the significant distinction between required curriculum, instruction and textbooks on the one hand, and voluntary access to collections of library materials on the other, have not received the attention they merit.

Although one of the nine banned books had earlier been approved by the school board for use in a senior literature course, all of the others were simple library books not used in the curriculum. The issue before this Court does not concern a question of classroom instruction but rather a question of access to books on school library shelves.

The parties seem to agree that materials in public libraries are immune from arbitrary censorship by state instrumentalities. One of the major unresolved questions presented by this case, therefore, is the status and function of the school library and the role of the professional librarian in decisions about collection maintenance.

The Long Island Library Association Coalition (the "Coalition") is composed of six groups of professional librarians covering the full range of libraries and disciplines in the Island Trees geographical area:

1. *The Nassau County Library Association,* whose membership includes 800 professional and clerical staff and trustees in academic, special and public libraries.

2. *The Suffolk County Library Association,* with a membership of over 400 members in the same categories.

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* References to the Joint Appendix will be cited as "J.A.—"; references to the opinion below, *Pico* v. *Board of Education, Island Trees Union Free School District No. 26,* 638 F.2d 404 (2d Cir. 1980), *cert. granted,* 50 U.S.L.W. 3265 (U.S. Oct. 13, 1981), will be cited as "Op.—."

3. *The Long Island School Media Association,* with a membership of 175 professional school media specialists (school librarians).*

4. *The Special Libraries Association,* composed of 90 librarians in business and technical libraries.

5. *The Children's Librarians Association of Suffolk County, Inc.,* with a membership of 70 children's library specialists.

6. *Medical and Scientific Libraries of Long Island,* comprising 100 librarians employed by institutional libraries.

The 1600-plus members of the Coalition believe that it is the function and responsibility of professional librarians to implement on the operational level the general policy mandates of their respective institutional governing bodies. The governing bodies set overall objectives, budget and guidelines, while the professional staff puts them into effect on a day-to-day basis.

At stake in this litigation is the continued vitality of the total educational experience upon which we depend to produce citizens capable of functioning in, and contributing to, a democratic society.

The librarians in the Coalition are professionally trained to make judgments on the quality and suitability of library materials and are deeply disturbed by the trend of censorship in school libraries which this case and the movement that triggered it represent. They believe that the Constitution places limits on the power of any public body to deny young people access to information made available for their use through a rational, fair and reasonable process.

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* One of these members is Irene Turin, the professional librarian in charge of the Island Trees school library at the time of the events at issue in this case.

Libraries are repositories of knowledge which play a significant role in the development of a student's intellectual and critical faculties. There are, and there must be, constitutional limits on a school board's power to purge a school library of its books. If a school board, unhampered by the limits of the Constitution, may make sporadic forays into school libraries to eliminate ideas which do not comport with its vision of the world, a valuable resource will be lost to the detriment of all children, indeed of all citizens.

Statement

This case arises from the action of elected members of the Board of Education of Island Trees, New York, in ordering the removal of nine books from the shelves of the senior high school library, and a tenth book from the junior high school library. An eleventh book was also removed from the senior high school curriculum* (J.A. -46, -54). The removal was instigated by two members of the board who, with a third, had attended an educational conference sponsored by a conservative organization in Watkins Glen, New York, in September, 1975 (J.A. -21, -22). There, one of them had obtained a list of books described as "anti-American, anti-Christian, anti-Semetic [sic], and just plain filthy" (J.A. -8). Subsequently, during an after-hours visit to one of the senior high school libraries when the professional library staff was absent, the two members checked the Watkins Glen list against the card catalog and found that nine of the offending books were catalogued and included in that library's collection. Precipitously, the board ordered the immediate removal of all books included in the

* Ultimately, the board permanently banned nine books, restored one to the restricted shelf and restored one book to the library shelves without restrictions (J.A. -75 through -79).

Watkins Glen list from the junior and senior high school libraries (J.A. -54). Its order was based solely on excerpts of the books included in the Watkins Glen list and on the reading of four of the books by one of the board members (J.A. -23). Ostensibly, the order was given to permit the members an opportunity to review them, but the board's directive forcibly stated that *"all copies"*—not simply examination copies—were to be removed and sequestered (J.A. -47) (emphasis in original). The board members then issued a press release describing the action they had taken and proclaiming themselves to be the "faithful Watchdogs" for "most" of the parents of the students (J.A. -10).

There was no claim by the board at the time the books were removed from the shelves that those books were wanting in literary merit or educational value. The sole basis given for their removal at the time was that the books presented a "moral danger" to students (J.A. -10).

A listing of the titles which were permanently banned by the school board from the school library appears in Appendix A, along with representative reviews from professional library journals and brief summaries of the literary credentials of their authors.

When the initial summary action was taken directing the physical removal of the books from the library shelves, the professional librarian in charge of the Island Trees school libraries, Irene Turin, went to the Superintendent of Schools, Richard Morrow, and questioned the board's action (J.A. -45). Mr. Morrow in turn objected to the board's banning of books based on the list obtained at Watkins Glen "unless we first study the books ourselves" (J.A. -44).

The Superintendent directed the attention of the board to the fact that it already had adopted a written policy "designed expressly to handle such problems." That policy,

he pointed out, called for the Superintendent, upon receiving an objection to a book or books, to appoint a study committee to make recommendations. The Superintendent urged that this written policy be followed (J.A. -44).*

The Superintendent specifically recommended to the board that a staff-parent committee be appointed to take under study the books on the list, "and that the staff members include Mrs. Turin, the District Chairman of Libraries; Mr. Brunnemer, High School Librarian; an English Department Head;" and one of two other named staff members (J.A. -46). He subsequently renewed the recommendation (J.A. -55).

The board disregarded the Superintendent's recommendations, as well as their own written policy providing for a due process review of the challenged books. This forced the Superintendent to take affirmative action on his own initiative. He issued a public statement protesting what the school board had done, and—for the third time—urged that a book review committee be appointed that would include "parents, teachers, librarians and administrators" (J.A. -56). He also urged that the books be returned to the library shelves until after the board had considered and acted upon the committee's recommendations (J.A. -57).

Their hands forced by the Superintendent's courageous appeal to public opinion,** the school board members finally approved the creation of a parent-teacher committee to review the challenged books. In direct contravention of the Superintendent's express recommendations, however, not a

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* The board later asserted—without referring to the text of the policy statement—that the written policy applied only to complaints by parents and not to complaints by the school board members (J.A. 25).

** The Superintendent has since been replaced.

single professional librarian was appointed to the committee. Although much was made in the court papers below about the "informed discussion and deliberation" among the committee members (J.A. -122), it is self-evident that there was no one present at those discussions to explain the professional judgments that went into the original selection of the books; or to review evaluations of the books in professional literature (*see* Appendix A); or to discuss the concept of balance and fairness which is essential to any adequate library collection (*see* the *Library Bill of Rights* and the *School Library Bill of Rights* set forth in Appendix B).

Voting by the book review committee was by closed ballot (J.A. -67), but there are reasonable inferences to be drawn from the 4-4 tie vote on several of the titles in a committee made up of four parents (selected by a school board which had already prejudged the issues) and four school staff members. Even so, after the committee reported that a majority of its members recommended that four of the offending books be restored to the library shelves, that a fifth be restored for use in the curriculum and that a sixth be restored but placed on a "restricted shelf," the school board overruled the committee on four of its recommendations, and proceeded to ban another book which the committee had not even had an opportunity to review and discuss (J.A. -79). A clear majority of the book review committee had voted for outright removal of only two of the disputed books, although there were tie votes on two others. The school board proceeded to vote for the removal of nine books. Only two books on the Watkins Glen list were actually restored to the shelves. The board did not give any reason for its failure to follow its appointed committee's recommendations (J.A. -75 to -79).

Following the school board's vote, the 17-year-old president of the student council, Steven Pico, along with three

other fellow students at the Island Trees High School, and one student at the Island Trees Memorial Junior High School, authorized the New York Civil Liberties Union to provide attorneys to bring suit on their behalf to enjoin the board's action.

The District Judge refused to issue an injunction, and sustained the board's action as being within its powers. On appeal, the Court of Appeals, by a 2-to-1 vote, ordered a trial of the case to determine, *inter alia*, the motivations behind the school board's action. The school board then petitioned the Court for a writ of certiorari, which was granted on October 13, 1981.

Summary of Argument

Local boards of education serve important discretionary functions in the education of the youth of their communities. Those functions, however, do not include any which "they may not perform within the limits of the Bill of Rights." *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 637 (1943). As the Court stated in *Barnette*,

> That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

Id.

A function of our system of public education is to instill in children the democratic values of our community. If a state, or its designee, the school board, is permitted to use its power to suppress ideas, it undercuts those very values which it should be seeking to instill.

There is no dispute that, in order to accomplish the goal of educating children for citizenship, a school board may select curriculum and textbooks* on the basis of content. When, however, the board selects curriculum and textbooks to convey its own political, social or moral vision of the world as the correct view and purges competing ideas, it goes beyond what is permissible under the First Amendment. Although the line between indoctrination and permissible inculcation of values is not easily drawn, the students' right to be free from indoctrination is one that must be safeguarded, when necessary, by judicial review.

It is equally true that a school board may not select or ban library books in order to purge ideas and standardize thought. Moreover, since the school library serves a unique function as a forum for the communication of diverse ideas, any decision to limit access to library books raises acute constitutional concerns. A decision to limit access to library books on other than pedagogical grounds is always constitutionally impermissible.

Amicus, as a participant in the total educational enterprise and as a guardian over the library resources which provide the tools for free thought, urgently requests this Court to render a decision invalidating the actions of the board in this case and defining the parameters of the Constitution's protection of student access to school library collections.

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* N.Y. Educ. Law § 701(2) (McKinney Supp. 1981-82) defines textbooks as those which students are "required" to use in a class or program.

ARGUMENT

I.

The School Board's Censorship of Library Books Constituted State Indoctrination of Students Prohibited by the First Amendment.

From the very beginning of our independence, we Americans have known that freedom requires knowledge, and knowledge in large part is a matter of self-help. This credo was espoused by many early leaders:

Thomas Jefferson—"If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be." Letter to Charles Yancey (1816).

James Madison—"[D]iffusion of knowledge . . . is the only Guardian of true liberty." Letter to George Thomson (June 30, 1825) *reprinted in* T. Jefferson, *3 Letters and Other Writings of James Madison, Fourth President of the United States* 492 (1865).

Ralph Waldo Emerson—"Some books leave us free and some books make us free." Journal (December 22, 1839) *reprinted in 7 The Journals and Miscellaneous Notebooks of Ralph Waldo Emerson* ¶ 102, at 329 (1969).

It is not only the "great works of literature" that have value for readers:

Plato—"The worst of authors will say something which is to the point." *Phaedrus* (428-347 BC).

Oliver Wendell Holmes, Sr.—"The foolishest book is kind of a leaky boat on a sea of wisdom; some of the wisdom will get in anyhow." *The Poet at the Breakfast Table* 355 (1872).

Shorn of all rhetoric, this case presents a fundamental question: whether a school board, in the exercise of its

mandate to educate, may impose an ideological orthodoxy on the library books available to its students.

The wisdom of the judiciary's general reluctance to intervene in the business of education is unassailable. The normal functioning of education is best left to state and local authorities. When an issue of constitutional magnitude arises, however, the Court has stated:

> [W]e act in these matters not by authority of our competence but by force of our commissions. We cannot, because of modest estimates of our competence in such specialties as public education withhold the judgment that history authenticates as the function of this Court when liberty is infringed.

West Virginia Board of Education v. *Barnette*, 319 U.S. at 640.*

The First Amendment must necessarily protect the student from state assaults aimed at indoctrination. If a state were free to tell its citizens what they must believe or to program them in such a way that they could believe nothing but that which the state officials condoned, the First Amendment's express guarantee of freedom of speech would be meaningless.

The Court in *Barnette* was confronted with the same underlying issue now presented in this case. The local school Board in *Barnette* adopted a regulation requiring that its students salute the American flag. The Court, striking down the regulation as an attempt to coerce patriotic sentiment, held:

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* *See also* Epperson v. Arkansas, 393 U.S. 97, 104 (1968), wherein the Court stated as follows:

> By and large, public education in our Nation is committed to the control of state and local authorities . . . . On the other hand '[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools,' *Shelton* v. *Tucker*, 364 U.S. 479, 487 (1960).

> We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power *and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.*

Id. at 642 (emphasis added). The Court continued:

> If there is any fixed star in our constitutional constellation, it is that *no official, high or petty, can prescribe what shall be orthodox* in politics, nationalism, religion, or other matters of opinion.

Id. (emphasis added).

A school board can no more coerce political and moral beliefs by purging all views inconsistent with its own than it can by forcing its students to recite a pledge of allegiance. The school board in each instance employs a means of indoctrination prohibited by the First Amendment.*

The facts in the record before the Court reveal, as respondents argue, a pervasive attempt by the board to indoctrinate the students of the district. It is particularly

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* Nothing in this Court's opinion in Ambach v. Norwick, 441 U.S. 68 (1979), is to the contrary. In *Ambach,* the question presented was whether, in furthering its interest in instilling in its pupils American civic values, a state would be permitted to bar aliens who had refused to become American citizens from becoming teachers in the public schools. Recognizing the discretion exercised by teachers in the classroom, the Court permitted the state to bar aliens "on the assumption that *generally* persons who are citizens, or who have not declined the opportunity to seek United States citizenship, are better qualified than are those who have elected to remain aliens." *Id.* at 81, fn 14 (emphasis in original). It is suggested by this that the state was concerned that the alien teacher could not fully understand and therefore was not fully qualified to transmit American civic values. Nothing in *Ambach* suggests that a state could require its teachers or its librarians to impose only one view of citizenship on the students to the exclusion of differing points of view.

telling that the board failed to consult its librarians, failed to include librarians in its appointed committee, rejected without explanation the recommendations of its teachers serving on the review committee, and failed to pay any attention to the professional literature concerning the books. These facts constitute persuasive evidence that the board took the action it did to impose "an official policy with regard to God and country of uncertain and indefinite content" (Op. 416). A motive to infringe the students' First Amendment right to be free from the imposition of such orthodoxy invalidates the board's decision. *Mt Healthy City Board of Education* v. *Doyle*, 429 U.S. 274 (1977).

II.

The School Library Is a Limited Public Forum Constitutionally Protected From State Intrusion.

The library historically has served a crucial function in the development of citizens in American society; it has provided a forum for the communication of diverse ideas. As the court recognized in *Minarcini* v. *Strongsville City Board of Education*, 541 F.2d 577, 582 (6th Cir. 1976):

> A library is a mighty resource in the free marketplace of ideas. . . (citations omitted). It is specially dedicated to broad dissemination of ideas. It is a forum for silent speech.

The communication of ideas within this forum, once created by a state, is constitutionally protected from censorship on the basis of the social, political or moral preferences of a local school board.

A. The Historical Development of the Library as a Forum for Communication of Ideas.

The history of public libraries in this country has been directly tied to the education of its youth. When Caleb

Bingham established what was to become the first tax-supported library in the United States of America in 1803, it was expressly created for the "primary" use of "children." Bingham, a former schoolmaster who had become a Boston bookseller, presented a gift of 150 books to the townspeople of his native town of Salisbury, Connecticut. He wrote to his brother explaining the reasoning behind his actions:

> I well remember when I was a boy how ardently I longed for the opportunity of reading, but had no access to a library. It is more than probable that there are, at the present time, in my native town, many children who possess the same desire and who are in the like unhappy predicament. This desire, I think I have it in my power in a small degree to gratify, and however whimsical the project may appear to those who have not considered the subject, I can not deny myself the pleasure of making the attempt. I have selected from my shelves 150 volumes for the sole use of the children of Salisbury, from nine to sixteen years of age.

(From a pamphlet published by the Scoville Memorial Library, Salisbury, Conn.).

The role of libraries as an extension of the educational process has long been accepted. In 1852, a group of citizens, attempting to organize Boston's first public library, issued a report written by Edward Everett and George Ticknor which stated the case for creating such an institution:

> Reading ought to be furnished to all, as a matter of public policy and duty, on the same principle that we furnish free education, and in fact, as a part, and a most important part, of the education of all. For it has been rightly judged that—under political, social and religious institutions like ours —it is of paramount importance that the means of

> general information should be so diffused that the largest possible number of persons should be induced to read and understand questions going down to the very foundations of social order, which are constantly presenting themselves, and which we, as a people, are constantly required to decide, and do decide, either ignorantly or wisely.

Report of the Trustees of the Boston Public Library (1852). The Boston Public Library opened its doors two years later.

Andrew Carnegie, who did more than any other single individual to stimulate the spread of public libraries to cities, towns and villages throughout the country, was motivated primarily by his belief that young people should have the opportunity to read what they want to read. Carnegie, as a young child, was employed as bobbin boy in a cotton factory in Allegheny City, Pennsylvania. A local citizen opened his private library for use by the working boys in town. Andrew went to his benefactor's house every Saturday afternoon to borrow a new book. He later wrote:

> It was when revelling in the treasure which he opened to us that I resolved, if ever wealth came to me, that it should be used to establish free libraries, that other poor boys might receive [similar] opportunities.

By the time of his death in 1919, Andrew Carnegie had financed the construction of 2,500 new public libraries; more were built under his will. All were intended primarily to benefit "other poor boys." W. Seymour & E. Layne, *For the People, Fighting for Public Libraries* 10 (1979).

Others of our most prominent leaders received their educations through use of the public libraries. Typical of these was Jacob K. Javits, who, as a member of the United States Senate (and soon to be a lead sponsor on

the proposed National Library and Information Services Act to provide equal library services to all citizens), told the witnesses at a Senate hearing of his childhood use of the public library:

> I am sure I would not be here were it not for the Rivington Street Public Library and the amount of extra schoolwork I was able to do. And I know other kids just like me who had exactly the same experience, who have had an appetite for learning, and you couldn't possibly satisfy it on a regular curriculum.

Id. at 36.

In the Midwest, another "juvenile" was able to find a substitute for a college education by reading every single book on the shelves of the Independence, Missouri Public Library by the time he was fourteen. So equipped, he went on to become President of the United States, the only president in this century who never attended college. President Harry S. Truman later told the head of the American Library Association, "Everything I know—except my law—I learned through the public library." *Id.* at 130.

The foregoing highlights of the history of the American library movement underscore that, from the beginning, the library has been a forum where young people might engage in independent inquiry necessary to the development of critical and independent thought. The library was a place where a wide range of relevant materials would be available to an inquiring young mind.

B. Valid Criteria for Content-Based Decisions in the Acquisition and Removal of School Library Books.

New York, in establishing school libraries, has recognized and adopted the historical model. Thus, the state regulations

governing school library collections require that a library provide "an adequate complement to the instructional program" and shall have at least 1,000 titles for secondary schools in which average daily attendance is fewer than 200 pupils up to at least 8,000 titles for secondary schools in which average daily attendance is more than 1,000 pupils. [1981] N.Y.C.R.R. § 91.1.

Within this state-created forum, books are to be chosen on the basis of whether they "complement" the instructional program by providing ideas and information necessary to make up the whole, to fill in the gaps. Within this framework, petitioners may argue that they may make a determination, for example, that a history of political parties in the United States not be included as a course in the curriculum. Should such a determination be made, the board arguably could direct that the school libraries not purchase books on that subject. In that sense, the school library is a limited public forum. L. Tribe, *American Constitutional Law* 690 (1978). However, once the board has set the broad parameters of the forum based on the curriculum taught in the schools, it may not constitutionally direct that libraries be stocked with 1000 to 8000 titles in its library which mirror its views while denying access to books which express less favored views:

> There is an 'equality of status in the field of ideas,' and government must afford all points of view an equal opportunity to be heard. Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say.

Police Department v. *Mosely*, 408 U.S. 92, 96 (1972) (quoting A. Meiklejohn, *Political Freedom: The Constitutional Powers of The People* 27 (1948)). *See also Widmar* v. *Vincent*, 50 U.S.L.W. 4062 (U.S. Dec. 8, 1981).

Within the limits of the school library forum, and consistent with the forum's purpose, book selection for school libraries must be based upon a book's relevance to the curriculum and its pedagogical value. Pedagogical value is measured by reference to the professional literature regarding the book's educational value, the author's reputation and style of writing, and other related criteria. Book selection for school libraries cannot be based on whether the book conveys a particular political, moral or social message. A selection on such a basis would be in patent violation of the decisions of this Court in *Mosely* and *Widmar*. By the same token, a decision to remove a book from the library shelves may be based on pedagocical standards alone.*

Since the school board itself admitted that its decision to ban the nine books was based on the political, moral and social viewpoints expressed in the books, and nothing in the record would support a finding that the board's action was in furtherance of a compelling state interest, respondents are entitled to a decision in their favor.

III.

The School Board's Abuse of Established Tradition, Practice and Policy Had a Chilling Effect on Speech.

Benjamin Franklin was one of the nation's first community librarians. Although he may have lacked professional training as such, he brought special qualities to the job. The most significant was his understanding of the

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* The board has offered as an after-the-fact justification for its actions an argument that the books at issue were not relevant to the curriculum. However, its president admitted that the board did not direct the staff not to discuss the banned volumes or the ideas contained therein (J.A. -28), thereby conceding that such books and ideas were relevant to the curriculum.

importance of providing library materials reflecting opposing sides of current issues. He later wrote about his part in organizing America's first community lending libraries:

> These libraries have improved the general conversation of Americans, made the common tradesman and farmers as intelligent as most gentlemen from other countries, and perhaps have contributed in some degree to the stand so generally made throughout the colonies *in defence of their privileges.*

B. Franklin, *The Autobiography of Benjamin Franklin* 69 (1850) (emphasis added).

Librarians have come a long way since Franklin's day. They now are professionally trained and state certified. They have professional organizations, ethical standards, and professional journals. They have earned the right to perform as professionals. Like the doctor, the lawyer and the priest, they are given a basic job to do, and are then left to their skills, experience and judgment.

Although the early development of public libraries was to a large extent for the purpose of educating the country's youth, the "school library" as such did not play a significant part in public education until after World War II. In 1945, a set of national standards for school libraries was adopted. A second set of standards was adopted in 1960 which covered professional qualifications, education and the specific responsibilities of school library staffs. Included among the latter standards was a careful description of the recommended selection procedure and the scope of school library materials. The goal set by the professionals in those standards was to achieve collections which were "well-balanced" and "well-rounded". The standards specifically incorporated the principles of the *School Library Bill of Rights* (see Appendix B).

The role and responsibility of the professional school librarian in upholding the quality of the school library collection was described as follows:

> A wealth of excellent material is available for children and young people, and there is no justification for the collections to contain materials that are mediocre in presentation and content. By virtue of their professional preparation and experience, librarians have the special competencies that enable them to evaluate materials critically. . . . They are familiar with and guided by the established criteria for the evaluation and selection of materials. They consult standard tools and reliable guides for the selection of materials and go beyond the limits of these sources whenever they have the opportunity to examine and to evaluate materials carefully before purchase.

Standards of the American Library Association 74 (1960).

In 1970, the board of directors of the American Association of School Libraries approved a statement of "policies and procedures for selection of instructional materials." The statement contained a recommendation that each local school board adopt its own written statement of policy regarding selection procedures which would, among other things, specifically delegate the selection of library materials to the professional staff, set forth the general criteria for selection and include a procedure for handling complaints concerning specific titles. The recommended procedure included a review committee to read the challenged material, to check professional reviews and to evaluate the work as a whole.

These recommendations are almost identical to those made by School Superintendent Morrow to the Island Trees school board. The recommendations were at first disre-

garded, then put into operation without professional librarians' participation, and then repudiated by the board's own final actions.

The *ad hoc* method by which the Island Trees school board banned the literature in question in this case served as an unambiguous signal to school librarians and other professionals to confine their book selections to those books they believed the board would find ideologically palatable, no matter how meritorious other books might be, and not to resist any subsequent challenge to the appropriateness of a particular book.

The participation of professional librarians and teachers in the process of selecting and reviewing library books ensures that a school board, in the course of fulfilling its desire to instill community values through the selection of curriculum and textbooks, will not impermissibly impose its own orthodoxy. *See* Yudof, *When Governments Speak: Toward a Theory of Government Expression and the First Amendment,* 57 Tex. L. Rev. 863, 874-82 (1979).

The method by which the Island Trees school board conducted its purge was calculated to prevent students' frank expression of views and to stifle the exercise of professional judgment by trained librarians who today perform the role of ensuring access to competing ideas and guarding against political and moral indoctrination in the educational system. This result invalidated the board's action, independent of the board's motives. *Keyishian* v. *Board of Regents,* 385 U.S. 589, 604 (1967).

CONCLUSION

Speaking at the 175th anniversary of the Bingham Library for Youth in Salisbury, Connecticut on October 14, 1978, former New York Times correspondent Harrison Salisbury contrasted America's open libraries with the tight control exercised by the Soviet Union over its libraries. Salisbury characterized the net effect of that control as "books in chains":

> If you go to the Lenin library, the greatest in Russia, the equivalent of our Library of Congress, you find that it's like a maze. There is a card catalog but only a small number of books are in that catalog. To pass through to the next calalog you must have security clearances which are not easy to get. You can go through one drawer after another, like an old Chinese puzzle, and at the end there will be enormous catagories of books which you cannot get unless you are a member of the Politburo itself or someone in the Kremlin. *Each successive Soviet change in government consign thousands of books to forbidden areas where no one has access.* (Emphasis added).

That is exactly what the Island Trees school board did in this case.

The school library is a broader forum than the school curriculum and its textbooks; the library provides access to balanced and diverse ideas and serves as a safety valve to ensure against intellectual and doctrinal rigidity. The contents of libraries cannot be left to the mercy or whim of citizen activists whose tenure in office depends on their popularity at the polls.

For the reasons set forth, respondents are entitled to a decision in their favor.

Respectfully submitted,

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December 30, 1981

APPENDIX A

Background material from professional library journals on the nine books removed from Island Trees school library.

1. ARCHER, Jerome W. *A Reader For Writers, A Critical Anthology of Prose Readings.*

> [The Table of Contents for this Anthology appears in the Joint Appendix at pages J.A. -132 through -137. Samples of prose writings by several dozen authors are included, among them: Wolcott Gibbs, Mark Van Doren, Arthur M. Schlesinger, Barbara Ward, Anthony Trollope, Gilbert Highet, Robert Benchley, Russel Lynes, Aldous Huxley, John F. Kennedy, James Madison, Alexis de Tocqueville, Thomas Jefferson, Jonathan Swift, Joseph Conrad, James Thurber, and others.]

2. CHILDRESS, Alice. *A Hero Ain't Nothin but a Sandwich.* 126p. Coward. Oct. 1973. CSm $5.95. ISBN 0-698-20278-3. L.C. 73-82035.

> *Gr 7 Up*—Tense, terse, and dramatic, this is a fine first novel by a black playwright. Why 13-year-old Benjie is an addict evolves through chapters that read like scenes in a play and are told from the various viewpoints of the people Benjie knows in Harlem: the pusher, his friends, teachers, grandmother, mother, her common-law husband, Butler —and Benjie himself. Each emerges as vital pathetic, striving, hopeless or helpless, but, above all, human. At first, Benjie will not face the reality of his habit: "I can't stand nobody lyin. . . . Why folks got to lie and say I'm on skag, say I'm a junkie? . . . I *take* somethin sometime, but I ain't no user." Caught nodding in class, he is put in the hospital to be detoxed. He begins to face the truth and admits that he resents Butler as a replacement for

the father who ran out. Benjie vents his rage by stealing Butler's good clothes to get money and so drives out the only hero in his life who might be more than "a sandwich." Butler, however, doesn't go far and is there to save Benjie from plunging off the roof of their building. Only then does the boy believe that someone really cares about him. Butler moves back. Benjie calls him Dad and seems to want to go straight. In the end, Childress makes poignantly clear that it's not enough to have someone else believe in him—Benjie must believe in himself. Written in tough street language, liberally sprinkled with four-letter words and cynical humor, this is a powerful depiction of loss. It takes its place beside June Jordan's *His Own Where* (Crowell, 1971).—*Alice Miller Bregman, "School Library Journal"*

Library Journal, 10/15/73, p. 3153

Other Writings by the Same Author:

Like One of the Family: Conversations from a Domestic's Life, Independence Press, 1956; *Wine in the Wilderness* (play), Dramatists Play Service, 1970; *Mojo* [and] *String* (two one-act plays), Dramatists Play Service, 1971; (editor) *Black Scenes: Collection of Scenes from Plays Written by Black People about Black Experience,* Doubleday, 1971, paperback edition published as *Black Scenes,* 1971.

Unpublished plays: "Trouble in Mind," produced Off-Broadway, 1955-56; "Wedding Bank," first produced at University of Michigan, 1966, produced Off-Broadway at Public Theatre, 1972.
Also author of "Gold through the Trees."

Appendix A

Awards and Honors:

Village Voice, Obie Award for best original Off-Broadway play, 1956, for "Trouble in Mind."

Contemporary Authors, New Revision Series, Vol. 1, p. 93

3. CLEAVER, Eldridge. *Soul on Ice.* 210p. (Ramparts Books), McGraw. 1968. $5.95. 67-27277.

YA—This is soul music, soul writing. The pages pulse with the feelings and thoughts of a man who has found his identity. Eldridge Cleaver, in his own words is "a fulltime revolutionary in the struggle for black liberation in America"; he is Minister of Information for the Black Panther Party for Self-Defense, an ex-Muslim, an admirer of Malcom X, and an eloquent spokesman for black men in pursuit of full freedom and equality. Cleaver offers an analysis of American society that cuts away what he feels are the euphemisms and myths that have cloaked our motives and actions at home and abroad. To him and to many others who have removed their rose-colored glasses, we appear to be racists and imperialist colonizers. There is anger, outrage, bitterness, and despair here, for Cleaver feels that white America is still not ready to see the black man as a bona fide human being. Nevertheless, the book is hopeful. Cleaver is effective because of his directness on such matters as black unity, American mores, manhood and sex. In clear, and sometimes earthy, language he tells it as he sees it. This is a powerful, moving plea for a better world—not only for black people, but for us all. *See LJ,* February 1, p. 564.—*Sumika Yamashita. Oakland Public Library, Calif.*

Library Journal, April 15, 1968

Appendix A

Other Writings by the Same Author:

Eldridge Cleaver: Post-Prison Writings and Speeches, 1969; *Eldridge Cleaver's Black Papers,* 1969; (author of introductions) Jerry Rubin, *Do It!,* 1970; also author, with others, of *War Within: Violence or Nonviolence in Black Revolution,* 1971.

4. *Go Ask Alice* [Author Anonymous]. 159p. Prentice-Hall, 1971. CSm. $4.95. ISBN 0-13-357111-4. LC 74-159446.

Gr 8 Up—This diary of a 15-year-old girl powerfully depicts all the confusion, loneliness and rebellion associated with adolescence. It documents two years in the life of a middle-class, suburban girl whose use of drugs to cover up her insecurities leads her into nightmare experiences. Unlike other "true-to-life" stories, this *is* true (it's based on an actual diary). The book expresses with an innocent and believable candor the attitudes which are so characteristic of adolescence, and its impact derives from its modest claims and unpretentious style. Laying bare her life to her diary, the author recounts her experiences (in school, at home and at parties; in San Francisco; using and pushing) in four-letter word strewn language which will undoubtedly offend many parents whose kids (not to mention the parents themselves) would benefit from reading this. An epilogue informs readers that the author "died three weeks after her decision not to keep another diary" of an overdose that could have been either premeditated or accidental. An important book, this deserves as wide a readership as libraries can give it.

—Jack Forman, Woodbridge Free Public Library, N.J.

Library Journal, 3/15/72, p. 1174

Based on an actual diary this is the "story of a fifteen-year-old, white, middle-class girl unsuspectingly introduced to LSD who immediately becomes an avid user of any drug available. Covering a two-year period the narrative is a . . . firsthand picture of life within the drug culture—the fellow initiates, trips, sex, and degradation. Although Alice makes several attempts to pull herself away from drugs and seems close to succeeding at the end of the book, a brief epilog tells of her death from an unexplained overdose."

Senior High School Library Catalog
11th Ed., 1977, p. 224

5. HUGHES, Langston. *The Best Short Stories by Negro Writers.* 512p. Little, 1967. $7.95. 67-11221.

These 46 short stories by Negro writers compose an excellent collection. Several of the stories here reprinted have appeared in a similar volume recently edited by John Henrik Clarke. However, the Hughes collection is superior by far and should be given first preference. Good stories by the old hands—Richard Wright, Willard Motley, Owen Dodson, Frank Yerby, and Alston Anderson—are present, but newer writers, such as Pearl Crayton, Kristin Hunter, Charlie Russell, Ernest G. Gaines, Clifford Vincent Johnson, and Woodie King, Jr., are well represented also. Helpful biographical notes appear at the back of the volume. Recommended for both

public and college libraries.—*Louise Giles, Oakland Community College, Union Lake, Mich.*

Library Journal, 2/1/67, p. 595.

Other Writings by the Same Author:

Novels: Not without Laughter. Knopf, 1930, reprinted, Macmillan, 1969; *Tambourines to Glory,* John Day, 1958, reprinted, Hill & Wang, 1970.
Short stories: The Ways of White Folks, Knopf, 1934, reprinted, 1963; *Simple Speaks His Mind,* Simon & Schuster, 1950; *Laughing to Keep from Crying,* Holt, 1952; *Simple Takes a Wife,* Simon & Schuster, 1953; *Simple Stakes a Claim,* Rinehart, 1957; *Something in Common and Other Stories,* Hill & Wang, 1963; *Simple's Uncle Sam,* Hill & Wang, 1965.
Autobiography: The Big Sea: An Autobiography, Knopf, 1940, reprinted, Hill & Wang, 1963; *I Wonder as I Wander: An Autobiographical Journey,* Rinehart, 1956.
Nonfiction: (With Roy De Carava) *The Sweet Flypaper of Life,* Simon & Shuster, 1955; (with Milton Meltzer) *A Pictorial History of the Negro in America, Crown,* 1956, 4th edition published as *A Pictorial History of Blackamericans,* 1973; *Fight for Freedom: The Story of the NAACP,* Norton, 1962; (with Meltzer) *Black Magic: A Pictorial History of the Negro in American Entertainment,* Prentice-Hall, 1967; *Black Misery,* Paul S. Erickson, 1969.
Also juvenile books, poetry, translations, plays, and screenplays.

Contemporary Authors, New Revision Series, Vol. 1, p. 286

Appendix A

Awards and Honors:

Opportunity magazine literary contest, first prize in poetry, 1925; Witter Bynnner undergraduate poetry prize contests, first prize, 1926; *Palms* magazine Intercollegiate Poetry Award, 1927; Harmon Gold Medal for Literature, 1931; Guggenheim fellowship for creative work, 1935; Rosenwald fellowship, 1941; Litt.D., Lincoln University, 1943; American Academy of Arts and Lettters, grant, 1947; Anisfeld-Wolfe Award for best book on racial relations, 1954; Spingarn Medal, National Association for the Advancement of Colored People, 1960.

Contemporary Authors, New Revision Series, Vol. 1, p. 286

6. MALAMUD, Bernard. *The Fixer.* 352pp. Farrar, Sept. $5.75. 66-20164.

There is none of the lightness of *A New Life,* but some of the symbolic feeling of *The Natural* in this powerful novel, which is certainly a major opus. Malamud has used as his source an actual court case in Kiev in 1913, when a Jew, Mendel Beiliss, was imprisoned and accused of ritual murder of a youth, in an attempt by the autocratic government to defame the Jews and associate them with liberal groups seeking emancipation. But the political element—or any external element—though present, plays little part in this novel. It is the story of the accused—here one Yakov Bok, an odd-job man—almost month by month through the grim three years in prison awaiting trial, where the attempts to make him confess encompassed not only personal indignities and torture but every other calculated effort to degrade and dehumanize a soul—loss of hope, of

trust in others, of spiritual consolation, of any basic communication with another. In the subtlest way, also, however, Malamud is showing a man grasping on to righteousness in his innocence till he can maintain his reason and compassion and finally achieve an understanding of the purpose of freedom in the mere existence of mankind and the need to defend this freedom. Superb in its meticulous analysis, its dramatic climaxes, this has a philosophic implication that in retrospect is reminiscent of *The Plague.* But in the actual reading (perhaps this is a personal reaction) it is a harrowing experience—so much so that at times it seems long and overdetailed.—*Rival. Brester, Head, Fict. Dept., Los Angeles, Calif., P.L.*

Library Journal, July, 1966, p. 340

Other Writings by the Same Author:

The Natural (novel), Harcourt, 1952; *The Assistant* (novel), Farrar, Straus, 1957; *The Magic Barrel* (stories), Farrar, Straus, 1958; *A New Life* (novel) Farrar, Straus, 1961; *Idiots First* (stories), Farrer, Straus, 1963. Contributor of short stories to *Partisan Review, Harper's Bazaar, New Yorker, Commentary,* and to *Best American Short Stories.*

Awards and Honors:

Partisan Review Fellow in fiction, 1956-57; Rosenthal award, 1958, for *The Assistant;* Daroff Memorial award, 1958, for *The Assistant;* National Book Award in fiction, 1959, for *The Magic* Barrel; Ford Fellow in humanities and arts, 1959-61.

Contemporary Authors, Vol. 7-8, p. 340

7. MORRIS, Desmond. *The Naked Ape: a Zoologists' Study of the Human Animal.* 256 p. bibliog. McGraw. 1968. $5.95. 67-29198. NAT HIST

This book is a worthwhile attempt to discuss man's behavioral patterns in the same manner as one would those of any other primate. Unfortunately, in his treatment of the subject, Dr. Morris, a zoologist, leaves much to be desired. His book is unevenly written: some chapters are fairly well written; others are very badly written. Dr. Morris feels free to present hypotheses as fact and sand castles as hypotheses. For example, in the chapter on sex, the somewhat questionable statement: "The protuberant, hemispherical breasts of the female must surely be copies of the fleshy buttocks, and the sharply defined red lips around the mouth must be copies of the red labia," is hedged by no less than two "ifs," three "supposing's," and one "might," including a description of the derriere of a hypothetical female ancestor whose postulated attributes are not amenable to scientific examination since they are not readily fossilized. To the statement "The penguin achieves the number one avian position [of popularity among children] because it is the most vertical of all the birds," one might properly inquire why a child should consider a penguin more vertical than an ostrich, especially when Dr. Morris describes the similarly proportioned giraffe as "permanently vertical" in explaining its popularity. The whipping of schoolboys by schoolmasters is described as "an ancient primate form of ritual copulation with their pupils." Even for popularized science, perhaps the term which best fits Dr. Morris's approach to his subject is "extravagant."—*John D.*

Buffington., Environmental Biology Task Force, Ft. Detrick, Frederick, Md.

Library Journal, 1/1/68, p. 91

Other Writings by the Same Author:

The Reproductive Behavior of the Ten-Spined Stickleback, E. J. Brill, 1958; *The Story of Congo* (juvenile), Batsford, 1958; (editor with Caroline Jarvis) *The International Zoo Yearbook,* Zoological Society of London, Volume I, 1959-60, Volume II, 1960-61, Volume III, 1961-62, Volume IV, 1962-63; *Introducing Curious Creatures,* Spring Books, 1961; *The Biology of Art: A Study of the Picture-Making Behaviour of the Great Apes and Its Relationship to Human Art,* Knopf, 1962; *Apes and Monkeys* (juvenile), Bodley Head, 1964, McCraw, 1965; (with wife, Ramona Morris) *Men and Snakes,* McGraw, 1965; *The Mammals: A Guide to the Living Species,* Harper, 1965; *The Big Cats* (juvenile), McGraw, 1965; *Zoo Time* (juvenile), Hart-Davis, 1966; (with Ramona Morris) *Men and Apes,* McGraw, 1966; (with Ramona Morris) *Men and Pandas,* Hutchinson, 1966, McGraw, 1967; (editor) *Primate Ethology,* Aldine, 1967; *The Human Zoo* (Book-of-the-Month Club selection), McGraw, 1969; *Patterns of Reproductive Behaviour: Collected Papers* (all previously published in journals), J. Cape, 1970, McGraw, 1971; *Intimate Behaviour,* J. Cape, 1971, Random House, 1972. Contributor to journals, including *Behaviour, British Birds, New Scientist,* and *Zoo Life.*

Awards and Honors:

Statuette with Pedestal from World Organization for Human Potential, 1971, for *The Naked Ape* and *The Human Zoo.*

Contemporary Authors, Vol. 45-48 p. 389

8. THOMAS, Piri. *Down These Mean Streets.* 352p. Knopf. 1967. $5.95. 66-19402. SOC SCI

Some of the more interesting books published in recent years have dealt with the problems of minority groups. This is such a book. It recounts the adolescent and early adult experiences of Piri Thomas, an American of Puerto Rican descent and the oldest and darkest of seven children. Mr. Thomas deals in depth with the indentity problems of dark Puerto Ricans and the subtle, and sometimes not so subtle, prejudice and discrimination they face in the United States. It is a story involving adolescent gangs, petty larceny, sex, building a "rep," trouble in school, welfare, an ambivalent father-son relationship, armed robbery, prison, eventual parole, and movement toward a new life. The language of the book is the language of the streets. However, it is well written, and the reader will gain considerable insight into life in Spanish Harlem and the difficulties faced by Puerto Ricans in this country. It can be expected that this book will have broad appeal among specialists and general readers.—*Morris A. Forslund, Sociology Department, University of New Mexico, Albuquerque*

Library Journal, 4/15/67, p. 1637

Other writings by the same author:

"The Golden Streets" (two-act drama), first produced in New York City at Riverside Park by Puerto Rican Traveling Theatre, September 9, 1970, *Saviour, Hold My hand* (authobiography), Doubleday, 1972; *Seven Long Times* (autobiography), Praeger, 1974; (author of introduction) Lefty Barretto, *Nobody's Hero: A Puerto Rican Story,* New American Library, 1977.

Appendix A

Awards and Honors:

Rabinowitz Foundation grant, 1962; Lever Brothers community service award, 1967.

Contemporary Authors, Vol. 73-76, p. 604

9. VONNEGUT, Kurt. *Slaughterhouse-Five: Or, the Children's Crusade.* 186p. $5.95. Seymour Lawrence: Delacorte. LC 69-11929.

YA—Kurt Vonnegut, in Dresden at the time of the Allied air-raids which killed more people than the atomic bomb at Hiroshima, was kept with his fellow prisoners of war in a most unpleasant place, a slaughterhouse. Struggling to record this experience for over 20 years, Vonnegut found that the only way to do so was as a novel of absurd black humor, science fiction. Awkward, inept, unprepossessing anti-hero Billy Pilgrim, a barably married, successful dentist and the father of a Green Beret, finds himself unstuck in time and able to experience events in his past, present, and future lives in completely jumbled order. For example, an event he returns to frequently is his capture by the Tralfamadoreans and his transport to their planet, where he's kept in a zoo. The novel throughout wryly comments on the human condition and on American attitudes and mores; always, however, it comes back to focus on the terrible events of 1944-45 and Pilgrim's own progress to the Dresden holocaust. Some ribald scenes and rough language may limit the book to senior high school students, who will find that it does justice to Mr. Vonnegut's reputation, first established for YAs with *Cat's Cradle* (Holt, 1963). See *I.J.*, Mar. 1, p. 1021—*Nancy Menken, Alhapibra High School Library, Martinez, Calif.*

Libary Journal, 12/15/69, p. 4624

Appendix A

Other writings by the same author:

—*Novels:* published by Delacorte, except as indicated: *Player Piano,* Scribner, 1952, reprinted Dell 1974; *The Sirens of Titan,* Dell, 1959; *Canary in a Cathouse* (short stories), Fawcett, 1961; *Mother Night,* Fawcett, 1962; *Cat's Cradle,* Holt, 1963; *God Bless You, Mr. Rosewater, or Pearls before Swine,* Holt, 1965; *Welcome to the Monkey House: A Collection of Short Works,* 1968; *Slaughterhouse Five,* 1969; *Breakfast of Champions, or Goodbye Blue Monday,* 1973; *Wampeters, Foma and Grand Balloons: Opinions* (essays), 1974; *Slapstick, or Lonesome No More,* 1976; *Jailbird,* 1979; (with Ivan Chermayef) *Sun Moon Star, Harper,* 1980.

Awards and Honors:

Guggenheim Fellow, Germany, 1967; National Institute of Arts and Letters grant, 1970; Litt. D., Hobart and William Smith Colleges, 1974.

Contemporary Authors, New Revision Series, Vol. 73-76, p. 604; Vol. 1, p. 678

APPENDIX B

THE LIBRARY BILL OF RIGHTS

(Adopted June 18, 1948.
Amended February 2, 1961, and June 27, 1967, by the ALA Council)

The Council of the American Library Association reaffirms its belief in the following basic policies which should govern the services of all libraries:

1. As a responsibility of library services, books and other library materials selected should be chosen for values of interest, information, and enlightenment of all the people of the community. In no case should library materials be excluded because of the race or nationality or the social, political, or religious views of the authors.
2. Libraries should provide books and other materials presenting all points of view concerning the problems and issues of our times; no library materials should be prescribed or removed from libraries because of partisan or doctrinal disapproval.
3. Censorship should be challenged by libraries in the maintenance of their responsibility to provide public information and enlightenment.
4. Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.
5. The rights of an individual to the use of a library should not be denied or abridged because of his age, race, religion, national origins, or social or political views.

6. As an institution of education for democratic living, the library should welcome the use of its meeting rooms for socially useful and cultural activities and discussion of current public questions. Such meeting places should be available on equal terms to all groups in the community regardless of the beliefs and affiliations of their members, provided that the meetings be open to the public.

SCHOOL LIBRARY BILL OF RIGHTS

(Approved by American Association of School Librarians Board of Directors, 1969)

The American Association of School Librarians reaffirms its belief in the Library Bill of Rights of the American Library Association. Media personnel are concerned with generating understanding of American freedoms through the development of informed and responsible citizens. To this end the American Association of School Librarians asserts that the responsibility of the school library media center is:

To provide a comprehensive collection of instructional materials selected in compliance with basic written selection principles, and to provide maximum accessibility to these materials.

To provide materials that will support the curriculum, taking into consideration the individual's needs, and the varied interests, abilities, socioeconomic backgrounds, and maturity levels of the students served.

To provide materials for teachers and students that will encourage growth in knowledge, and that will

develop literary, cultural and aesthetic appreciation, and ethical standards.

To provide materials which reflect the ideas and beliefs of religious, social, political, historical, and ethnic groups and their contribution to the American and world heritage and culture, thereby enabling students to develop an intellectual integrity in forming judgments.

To provide a written statement, approved by the local Boards of Education, of the procedures for meeting the challenge of censorship of materials in school library media centers.

To provide qualified professional personnel to serve teachers and students.